

EXHIBIT B

DECLARATION OF DESIREE GONZALES-PEREZ

I, Desiree Gonzales-Perez, do hereby swear, affirm and attest under the penalties of perjury as follows, based upon my personal knowledge of the matters contained herein:

1. I am over the age of 18 and competent to testify to the matters stated in this declaration.

2. I am the General Manager of The 40/40 Club (the "Club").

3. The Club's non-exempt employees include front of the house, back of the house, and office staff. Employees in different positions are compensated in different manners.

4. The Club's servers and bartenders ("tipped employees") receive a significant amount of gratuities directly from customers as well as an hourly wage from the Club. With tips and wages, the Club's tipped employees receive far more than minimum wage.

5. Receptionists/telephone operators are paid an hourly rate in excess of the minimum wage. They do not receive gratuities from customers.

6. All non-exempt employees must clock in and out on the Club's positouch computer system.

7. Until October 2007, the Club used Paychex to administer its payroll. Based on each employee's hours worked and hourly wage-rate, Paychex calculated the payroll and processed employees' paychecks.

8. The Club currently uses ADP to perform these functions.

9. Employees' paychecks are available for pick up in the Club's office.

10. It is common in the restaurant industry for the paychecks of employees earning significant amounts in tips to be "void." This occurs because the Club deducts income tax, employee social security tax, and employee Medicare tax based on the employee's earnings from

wages and tips. Because the Club does not take possession of tips, deductions are taken from the wage portion of the tipped employee's income.

11. Tipped employees do not always choose to retrieve their paychecks.

12. The Club closes no later than 4:00 a.m. and, during the week, regularly closes earlier.

13. Once the Club is closed, tipped employees cash out and perform minimal side work. These tasks generally take an hour or less to complete.

14. If employees fail to clock out, their time records will incorrectly indicate that they worked until 6:45 a.m., the time at which the Club's positouch system automatically recycles. However, there would be no reason for any tipped employee to "work" until 6:45 a.m. and manual adjustments to payroll are sometimes required.

15. Upon clocking out, tipped employees must declare the tips they earned that night.

16. The Club's computer system permits servers to add a 20% gratuity to their customers' bills. Bartenders can add this same gratuity to bills over \$30.00.

17. Tipped employees collect and hold their tips, together with the Club's sales income, throughout their shift. During the cash out process, each tipped employee gives the Club its sales money less any credit card tips owed to the employee.

18. The Club's tipped employees generally receive more cash than credit card payments and, therefore usually do not receive money from the Club in tips. However, on the rare occasions where the amount of cash received by the employee is less than the credit card tips earned, the Club pays the employee the balance.

19. Tipped employees also receive gratuities for parties, which are either paid to the employees in cash at the end of the night, or by check shortly thereafter.

20. The Club does not retain any portion of employees' tips.

21. The Club requires tipped employees to take precautions to ensure that customers pay for all of the items they order.

22. Customers paying cash must do so upon delivery of their order.

23. Where a customer prefers to keep a tab open, the tipped employee is required to take and hold the customer's credit card and a photo identification. The tipped employee must also pre-authorize and imprint the credit card. When the tab is closed, the customer must sign the sales slip and credit card imprint.

24. These procedures, if followed, make it impossible for a customer to leave the Club without paying.

25. There have been occasions when a customer left without signing the credit card slip or voucher. In such cases, because the Club has not received all necessary authorization for the full charge, it does not immediately provide the tipped employee with the 20% tip indicated on the bill. Rather, the Club waits ninety days to determine whether the customer disputes the charge. If the charge is not disputed, the tipped employee then receives the tip.

26. Employees are instructed to direct any questions or problems concerning their wages to a manager. They may also submit payment correction forms for any alleged errors in their wages. Such forms are readily available to all of the Club's employees.

27. To my knowledge none of the named plaintiffs in the *Williams* or *Pickering* matters submitted a complaint about improper payment of wages.

28. The named plaintiffs in the *Williams* matter were employed by the Club as servers or bartenders. They were not employed as runners or bussers. None worked at the Club after October 2006.

29. Both *Pickering* plaintiffs worked at the Club as receptionists in 2005 and/or 2006.

Pursuant to 28 U.S.C. § 1746, I verify under penalty of perjury, under the laws of the United States of America, that the foregoing is true and correct.



Desiree Gonzales-Perez



Date